Public Servants Disclosure Protection Tribunal

Report on Plans and Priorities
2008-2009

The Honourable Josée Verner, P.C., M.P.
Minister of Canadian Heritage, Status of
Women and Official Languages

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Section I: Overview

Chairperson's Message

I am pleased to present the 2008-2009 *Report on Plans and Priorities* for the Public Servants Disclosure Protection Tribunal.

The creation of the Tribunal is part of the government's agenda to strengthen accountability and enhance public trust and confidence in the integrity of public servants. The Tribunal derives its mandate from the *Public Servants Disclosure Protection Act*, which came into force on April 15, 2007. The *Act* is designed to encourage public servants to report wrongdoing by providing protection, in law, against reprisals.

The *Act* recognizes that the federal public service is an important pillar of Canadian democracy and that it is in the public interest to maintain and enhance public confidence in the integrity of public servants. The establishment of effective procedures for the disclosure of wrongdoing and the protection of public servants who report wrongdoing is one means of enhancing confidence in the public service.

The Tribunal will hear cases involving complaints of reprisal filed by public servants and referred by the Public Sector Integrity Commissioner. It will determine whether a public servant has been subject to a reprisal as a result of his or her reporting potential wrongdoing. The Tribunal has the power to order remedies and disciplinary action.

This report outlines the Tribunal's main priorities, initiatives and expected outcomes for the next three years. The Tribunal's top priorities, in its first year of operation, will be to establish rules of procedure in consultation with all interested parties, develop processes for the handling of complaints, and provide information to public servants and Canadians about the Tribunal's mandate, powers and practices. This will ensure that the Tribunal is ready when it receives its first case from the Public Sector Integrity Commissioner.

As a quasi-judicial and independent body, the Tribunal is committed to ensuring that public servants who file complaints of reprisal and public servants against whom allegations of reprisal are made are treated in a fair and impartial manner.

As the Tribunal's first Chairperson, I am mindful of my responsibility to ensure that the new Tribunal establishes a strong foundation for those who will follow.

The Honourable Pierre Blais, P.C.

Management Representation Statement

I submit, for tabling in Parliament, the 2008-2009 *Report on Plans and Priorities* (RPP) for the Public Servants Disclosure Protection Tribunal.

This document has been prepared in accordance with the reporting principles contained in the *Guide for the Preparation of Part III of the 2008-2009 Estimates: Reports on Plans and Priorities and Departmental Performance Reports.*

- It adheres to the specific reporting requirements outlined in the Treasury Board of Canada Secretariat guidelines.
- It is based on the Tribunal's Strategic Outcome and Program Activity Architecture, approved by the Treasury Board.
- It presents consistent, comprehensive, balanced and reliable information.
- It provides a basis of accountability for the results achieved with the resources and authorities entrusted to the Tribunal.
- It reports finances based on planned spending numbers approved by the Treasury Board of Canada Secretariat.

Lisanne Lacroix
Registrar, Public Servants Disclosure Protection Tribunal

Raison d'être

The Public Servants Disclosure Protection Tribunal (the Tribunal) is an independent, quasi-judicial body established by the *Public Servants Disclosure Protection Act* (the *Act*) as part of the government's plan to strengthen accountability and enhance confidence in the integrity of public servants.

The raison d'être of the Tribunal is to protect public servants from reprisal following their disclosure of wrongdoing. Its mandate is to hear complaints of reprisal referred by the Public Sector Integrity Commissioner (the Commissioner).

The Tribunal has the power to grant remedies to complainants and to order that disciplinary action be taken against persons determined to have taken reprisals.

Mission

The Tribunal's mission is to contribute to the enhancement of an ethical culture in the public service through the impartial and timely disposition of cases involving complaints of reprisal, alleged to have been taken against a public servant as a result of his or her disclosing possible wrongdoing.

This includes:

- Processing cases in a timely manner;
- Ensuring that all processes are fair and transparent;
- Ensuring that parties are treated fairly;
- Rendering decisions that are sound and well reasoned;
- Informing interested persons, key stakeholders and Canadians about the Tribunal's role and mandate;
- Providing public access to information;
- Promoting a work environment that fosters the development of a knowledgeable and client-centred staff.

Benefits to Canadians

The federal public service is an important national institution and is part of the essential framework of Canadian parliamentary democracy. Canadians have a vested interest in ensuring that the public service operates efficiently, effectively and ethically. They have a right to expect that public sector employees behave ethically and in accordance with their legal obligations.

The Tribunal is one component of the new wrongdoing disclosure regime introduced by the *Act*. Chief executives, the Commissioner, the Treasury Board and the Canada Public Service Agency all have new responsibilities under the *Act*. The Tribunal's success, and

that of the other parties, will help create an environment in which employees can openly raise concerns without fear or threat of reprisal. It will also contribute to the development of a culture within the public service that espouses the highest standards of ethical conduct.

Organizational Information

Members of the Public Servants Disclosure Protection Tribunal

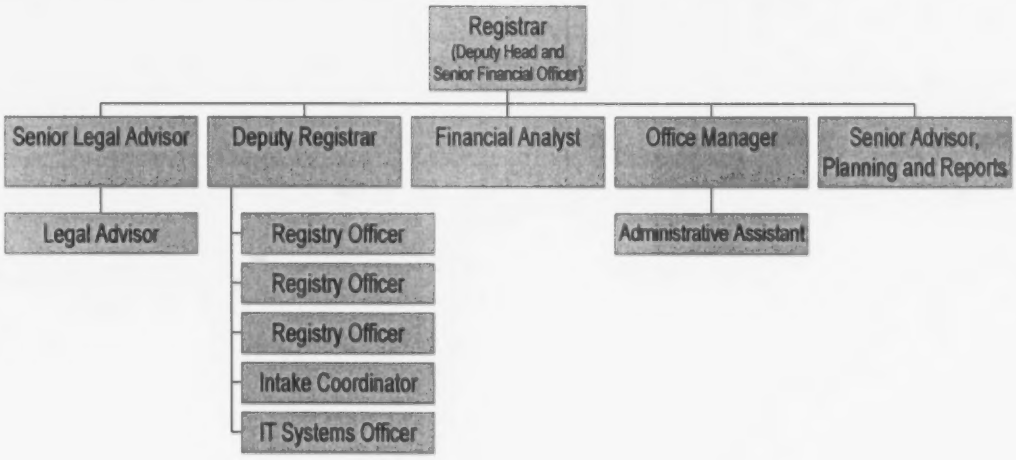
The *Act* stipulates that the Tribunal must consist of a Chairperson and between two and six members. All members must be judges of the Federal Court or a superior court of a province. The Tribunal currently consists of four Federal Court judges. The Chairperson, the Honourable Pierre Blais, and the three members, the Honourable Richard Mosley, the Honourable Judith A. Snider, and the Honourable Luc Martineau were appointed by the Governor in Council on June 27, 2007.

Registry of the Public Servants Disclosure Protection Tribunal

The *Act* provides for the establishment of a Registry, with an office in the National Capital Region, to help the Tribunal in the conduct of its work. The Registrar of the Tribunal and the other employees are appointed under the *Public Service Employment Act*.

The following organizational structure will enable the Registry to provide the support required by the Tribunal.

Planned Organizational Structure



Strategic Outcome and Program Activities

The Tribunal issues decisions providing for remedial and disciplinary actions that ensure that complainants to the Office of the Public Sector Integrity Commissioner are protected against reprisals. The Registry assists the Tribunal in fulfilling its mandate through the Reprisal Hearings Program. This program provides for the effective management of the Tribunal's hearing process. This includes receiving documents, processing cases, maintaining Tribunal records, offering logistical, legal and policy support, providing orientation and training for Tribunal members, and informing parties and interested persons of Tribunal procedures.

Financial Allocation by Program Activity

Program Activity	Total ($ thousands)
Reprisal Hearings Program	$1,860

Voted and Statutory Items displayed in the Main Estimates

($ thousands)

Vote		2008–09 Main Estimates	2007–08 Main Estimates
95	Program expenditures	1,644	.....
(S)	Contributions to employee benefit plans	189	.....
	Total Agency	1,833	.....

Departmental Planned Spending Table and Full-Time Equivalents

($ thousands)	Forecast Spending 2007–08	Planned Spending 2008–09	Planned Spending 2009–10	Planned Spending 2010–11
Reprisal Hearings Program	N/A	1,860	1,860	1,860
Total Main Estimates	N/A	1,860	1,860	1,860
Adjustments				
Supplementary Estimates				
Funding for the establishment and operation of the Tribunal	1,644			
Employee Benefit Plan (EBP)	216.0			
Total Adjustments	1,860	0.0	0.0	0.0
Total Planned Spending	1,860	1,860	1,860	1,860
Plus: Cost of services received without charge	198.3	92.0	92.0	92.0
Total Departmental Spending	2,058.3	1,952	1,952	1,952
Full-Time Equivalents	8	10	12	12

Summary Information

Financial Resources ($ thousands)

2008–09	2009–10	2010–11
1,860	1,860	1,860

Human Resources

2008–09	2009–10	2010–11
10	12	12

Program Activities by Strategic Outcome

Strategic Outcome: Remedial and disciplinary actions that ensure complainants to the Office of the Public Sector Integrity Commissioner are protected against reprisals					
Program Activity	**Expected Results**	**Planned Spending ($ thousands)**			**Contributes to the Following Priority**
		2008–09	**2009–10**	**2010–11**	
Reprisal Hearings Program	Effective management of the Tribunal's hearing processes	1,860	1,860	1,860	Priorities 1-3

Departmental Priorities

Name	Type
1. Be ready to hear cases	New
2. Inform interested persons, key stakeholders and Canadians	New
3. Monitor issues arising from the application of the *Act*	New

Challenges

As part of its strategic planning process, the Registry has identified the following key challenges.

Unpredictable caseload

It is impossible for the Tribunal to estimate how many cases it will receive, particularly in the first years. This will depend on several factors, including the number of complaints that are filed with and investigated by the Commissioner, and the number of complaints that are settled through conciliation. The unpredictability of the caseload makes it difficult for the Registry to manage its human and financial resources efficiently. Not knowing how many cases will be referred to the Tribunal by the Commissioner in any given year makes it difficult to effectively manage the fiscal allocation for hearings.

Limited awareness of the Tribunal

Interested persons, key stakeholders and Canadians may not be aware of the existence of the Tribunal given that it has just been established. There is currently very little information available on the Tribunal's role and mandate.

Multiple parties

The Tribunal is one of several components of the wrongdoing disclosure regime. The Canada Public Service Agency, the Treasury Board, the Commissioner and chief executives all have responsibilities under the new *Act*. Preliminary discussions with public servants and stakeholders have revealed that there is some confusion about the roles and responsibilities of each party, particularly those of the Commissioner and the Tribunal.

Supporting the Tribunal

The Registry must be in a position to support the Tribunal quickly. However, establishing an organization from the ground up presents significant challenges. The Registry will need to recruit staff, find office space, purchase furniture and equipment, and establish procedures, processes and systems, while at the same time briefing Tribunal members on their new responsibilities and working with key stakeholders to develop the Tribunal's rules of procedure.

Recruiting staff

The key to providing the support needed by the Tribunal is to find qualified employees and to bring them on board quickly. This will be a challenge for the Registry given that the Tribunal is not well known and the nature of the work to be done requires specialized skills. As well, adequate time is required to ensure public service staffing requirements are met.

Meeting central agency expectations

The Registry is subject to the same management and control requirements of the *Financial Administration Act* and to the various Treasury Board policies and government regulations as large departments. It is also subject to government-wide management initiatives such as the Management Accountability Framework and Public Service Modernization. The Registry will find it difficult to meet these requirements given its small staff complement. This will be particularly challenging in the first year when the Registry is establishing itself and endeavouring to meet the needs of the Tribunal.

- **Acquiring corporate services**

  Because of its small size, the Registry will not be in a position to provide its own corporate services. It will be required to purchase these services from suppliers inside and/or outside government. Finding suppliers that provide high-quality, reliable, timely and affordable services will be challenging and time-consuming. Maintaining accountability for services provided by other parties may also prove to be a challenge.

Mitigation Strategies

The following strategies will help the Registry deal with the challenges presented above. These strategies have been factored into the Tribunal's plans and priorities presented later in the report.

- **Learn from other tribunals**

  There are several tribunals in the National Capital Region, some of which have been in existence for over twenty years. These tribunals face some of the same challenges as the new Public Servants Disclosure Protection Tribunal. These tribunals constitute an important source of information and advice and will undoubtedly be prepared to share their knowledge, experience, practices and tools with the Tribunal.

- **Join the Community of Federal Agencies**

  The Community of Federal Agencies is an informal network of over 130 federal agencies, boards, commissions, tribunals and crown corporations. Meetings of the network provide opportunities to exchange views and share common concerns and experiences. The Community has established sub-groups on finance, human resources and information technology. Some members of the Community have come together to establish a Labour-Management Consultation Committee. By joining the Community, the Tribunal will have access to all these forums. These networks may also provide opportunities to find staff with the specialized skills required by the Tribunal.

- **Draw on available resources**

  Some resources have been made available to small agencies to help them fulfil their legal obligations. The most notable of these is the Small Agency Transition Support Team, established to help departments and agencies with fewer than 500 employees meet the requirements of the *Public Service Employment Act*. The Tribunal will be relying heavily on the Support Team as well as on advice and guidance from the Canadian Heritage Portfolio Governance Office and the central agency analysts assigned to work with the Tribunal.

- **Partner with other small agencies**

  The Tribunal will explore opportunities to partner with other small agencies in order to maximize efficiency, control costs and reduce risk.

- **Develop a human resources plan**

  The Tribunal faces several challenges on the human resources front and will benefit from taking time, at the outset, to develop a human resources plan with an emphasis on staffing and training strategies. Other tribunals could provide valuable training opportunities for employees who may not have experience working for a quasi-judicial body.

- **Develop a strategic communications plan**

  Developing and implementing a communications plan will help determine the best strategies for informing interested persons, key stakeholders and Canadians about the existence, role and mandate of the Tribunal.

Section II: Analysis of Program Activities by Strategic Outcome

Plans and Priorities: Overview

Given that the Tribunal is in its early stages, its first priority is to be ready to hear cases. This requires the establishment of a registry staffed with employees who have the skills and experience needed to build a quasi-judicial organization from the ground up, in a short period of time. Other priorities include the need for the Tribunal to inform interested persons, key stakeholders and Canadians about its mandate, procedures and processes, and to monitor issues arising from the application of the *Act*. These priorities and the activities that will be undertaken under each priority are described more fully below.

Reprisal Hearings Program: Year 2008-2009

PLANS AND PRIORITIES 2008-2009
Priorities
1. Be ready to hear cases
2. Inform interested persons, key stakeholders and Canadians
3. Monitor issues arising from the application of the *Act*

1. Be ready to hear cases

Ensuring that the Tribunal is ready when it receives its first case from the Commissioner will require action on several fronts. The Registry will be undertaking the following activities, on a priority basis, in its first year of operation.

- **Establish rules of procedure and a case management framework**

  The rules of procedure that will govern proceedings before the Tribunal will be developed in consultation with key stakeholders. Once these rules are in place, the Registry will establish processes for the effective management of cases.

- **Develop an information management system**

  The Registry will also develop an information management system that will enable staff to manage case workflow and to register, file, track and retrieve documents pertaining to cases.

- **Develop and implement a human resources plan**

  People are an organization's most important strategic resource. Human resources planning will help the Registry identify the type of people it needs, how and where to find them, and how to retain them.

- **Acquire corporate services**

  The Registry must ensure that it has access to the corporate services it needs to operate. It will explore options for the acquisition of these services from Public Works and Government Services Canada (PWGSC), the Public Service Commission and other tribunals or agencies. It will also work with PWGSC to find suitable office space. The need to establish robust, reliable and secure information technology systems will be of particular importance.

- **Develop a management accountability framework**

  This involves the development of a framework that will ensure that the Registry puts in place sound management practices and effective mechanisms to measure progress. In its first year of operation, the Registry will develop a performance measurement framework and performance indicators. It will also begin to work on the other elements of the Management Accountability Framework required by the Treasury Board Secretariat.

2. Inform interested persons, key stakeholders and Canadians

The whole premise of the wrongdoing disclosure regime is that public servants will be more inclined to report possible wrongdoing because they are legally protected against reprisals. It is critical, in this context, that public servants be aware of the establishment of the new Tribunal and of its powers to order remedies and disciplinary actions. The following activities will be carried out by the Registry in 2008-2009.

Develop a strategic communications plan

Information about the Tribunal needs to be made available as quickly as possible. The creation and adoption of a strategic communications plan will guide the Registry in its short- and long-term communications efforts and ensure that it deploys its resources effectively and strategically.

Develop and disseminate communications material

The Registry will have, as one of its top priorities, the development of a Web site. It will also develop communications material, including a guide to assist parties involved in proceedings before the Tribunal.

3. Monitor issues arising from the application of the *Act*

The Canada Public Service Agency is required to conduct an independent review of the administration and operation of the *Act* in 2011, five years after the coming into force of the legislation. The review will assess the extent to which the procedures established under the *Act* have encouraged public servants to disclose wrongdoing and protected them from reprisals. The Tribunal will be actively involved in this review.

Contribute to the development of the logic model for the *Act*

The Agency is in the process of developing a logic model that identifies the linkages between activities and outcomes. This document will provide a basis for the development of performance measures and evaluation strategies by all parties who have responsibilities under the *Act*. The Registry is working with the Agency to develop this logic model.

Reprisal Hearings Program: Year 2009-2010

PLANS AND PRIORITIES 2009-2010
Priorities
1. Hear cases
2. Inform interested persons, key stakeholders and Canadians
3. Monitor issues arising from the application of the *Act*

1. Hear cases

The Registry will develop a knowledge base and expand its expertise through research. Areas of research could include case law pertaining to reprisals, evidence, remedies, disciplinary action, and judicial reviews of the Commissioner's and the Tribunal's decisions. The Registry could also study the works of legal experts in the areas of wrongdoing and labour and employment law.

2. Inform interested persons, key stakeholders and Canadians

The Registry will continue to implement the strategic communications plan developed the previous year. It will also post decisions of the Tribunal on its Web site.

3. Monitoring issues arising from the application of the *Act*

Assess preliminary results

The Tribunal will assess initial results against the performance indicators established in its first year of operation. It will also monitor issues arising from the application of the *Act* raised by interested persons, key stakeholders and Canadians.

Reprisal Hearings Program: Year 2010-2011

PLANS AND PRIORITIES 2010-2011
Priorities
1. Hear cases
2. Monitor issues arising from the application of the *Act*
3. Develop strategic plan post review of the *Act*

1. Hear cases

The Registry will develop service standards to ensure that the hearing process is as efficient and effective as possible. These standards will be based on the Tribunal's performance in the previous two years, comparisons with similar organizations, and the evaluation of the Reprisal Hearings Program that it will be conducting the same year (see below).

2. Monitor issues arising from the application of the *Act*

In preparation for the five-year review of the *Act*, the Registry will examine issues and concerns pertaining to the Tribunal, the Registry and the hearing process with a view to determining what amendments, if any, it will recommend.

3. Develop strategic plan post review of the *Act*

The Registry will conduct an evaluation of its Reprisal Hearings Program. It will use the results of this evaluation and the five-year review of the *Act* to develop a three-year strategic plan that includes measures to improve the Program, if required.

Table 1: Departmental links to the Government of Canada Outcomes

Strategic Outcome: Remedial and disciplinary actions that ensure complainants to the Office of the Public Sector Integrity Commissioner are protected against reprisals					
Program Activity	**Expected Results**	**Planned Spending ($ thousands)**			**Alignment to Government of Canada Outcome Area**
		2008-09	**2009-10**	**2010-11**	
Reprisal Hearings Program	Effective management of the Tribunal's hearing process	1,860	1,860	1,860	Government Affairs

Table 2: Services Received Without Charge

($ thousands)	**2008–09**
Accommodation provided by Public Works and Government Services Canada	**43.0**
Contributions covering employer's share of employees' insurance premiums and expenditures paid by the Treasury Board of Canada Secretariat	**49.0**
Salary and associated expenditures of legal services provided by Justice Canada	**0.0**
Total services received without charge	**92.0**

Section III: Supplementary Information

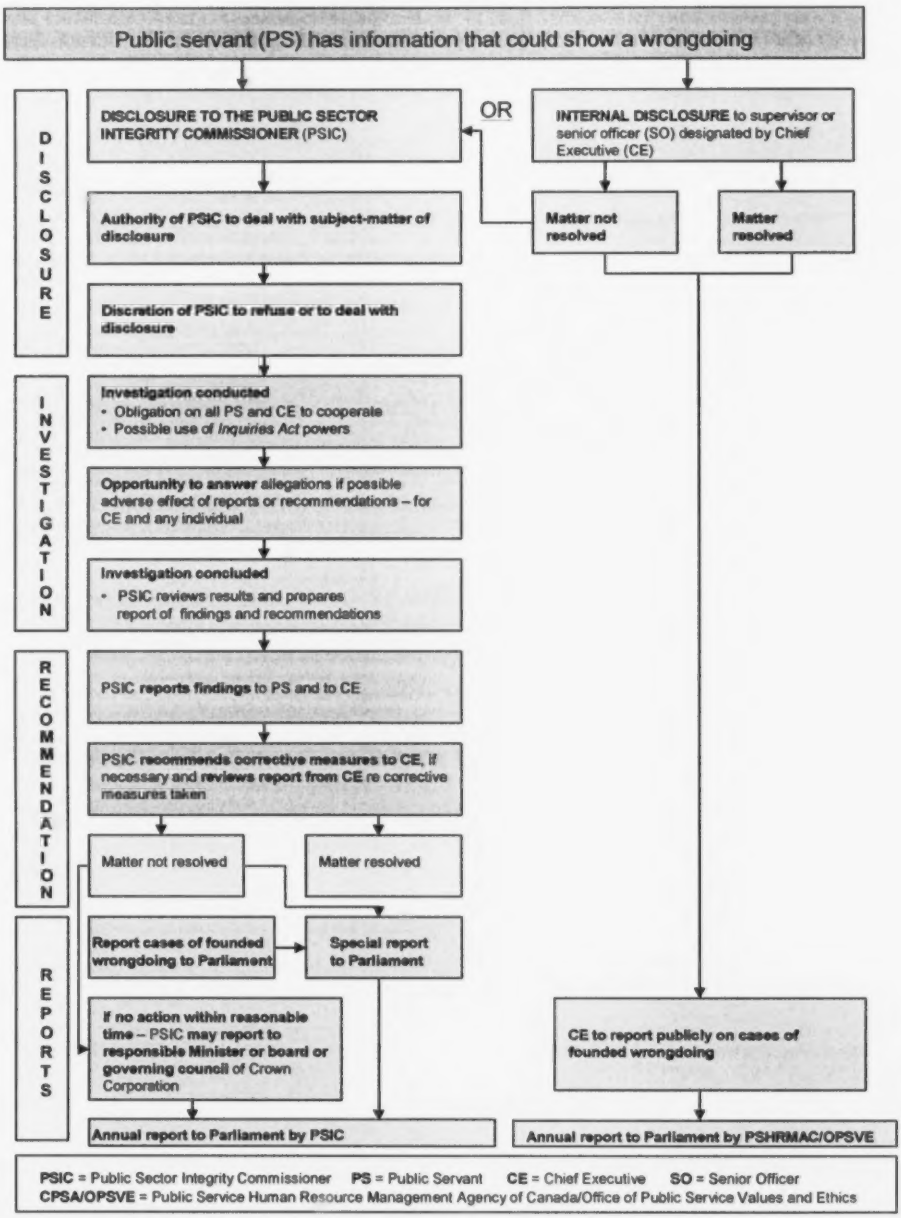
Wrongdoing Disclosure Process

Below are the key steps of the wrongdoing disclosure process.

1. Chief executives must establish an internal disclosure mechanism and designate a senior officer to be responsible for receiving and dealing with disclosures of wrongdoing in their organization.
2. A public servant can make a disclosure of wrongdoing to his/her supervisor, the senior officer designated for this purpose by the chief executive, or the Commissioner.
3. When a public servant makes a disclosure of wrongdoing to the Commissioner, the Commissioner may decide to conduct an investigation.
4. If the Commissioner investigates and determines that the allegation is founded, she recommends corrective measures to the chief executive.
5. The Commissioner submits a report to Parliament outlining her findings and recommendations, and the corrective measures taken by the chief executive.
6. If action is not taken by the chief executive within a reasonable period of time or if there is an imminent risk of danger, the Commissioner may report the matter to the responsible Minister or to the board or governing council of a Crown corporation.
7. A public servant can make a public disclosure only if there is insufficient time to use the mechanisms provided for in the *Act*. The public servant must have reasonable grounds to believe that a serious offence has been committed under an Act of Parliament or of the legislature of a province, or that there is an imminent risk of danger to the life, health and safety of persons, or to the environment.

A diagram of the wrongdoing disclosure process can be found on the following page.

Wrongdoing Disclosure Process


Public servant (PS) has information that could show a wrongdoing
DISCLOSURE
DISCLOSURE TO THE PUBLIC SECTOR INTEGRITY COMMISSIONER (PSIC)
OR
INTERNAL DISCLOSURE to supervisor or senior officer (SO) designated by Chief Executive (CE)
Authority of PSIC to deal with subject-matter of disclosure
Matter not resolved
Matter resolved
Discretion of PSIC to refuse or to deal with disclosure
INVESTIGATION
Investigation conducted
• Obligation on all PS and CE to cooperate
• Possible use of Inquiries Act powers
Opportunity to answer allegations if possible adverse effect of reports or recommendations – for CE and any individual
Investigation concluded
• PSIC reviews results and prepares report of findings and recommendations
RECOMMENDATION
PSIC reports findings to PS and to CE
PSIC recommends corrective measures to CE, if necessary and reviews report from CE re corrective measures taken
Matter not resolved
Matter resolved
REPORTS
Report cases of founded wrongdoing to Parliament
Special report to Parliament
If no action within reasonable time – PSIC may report to responsible Minister or board or governing council of Crown Corporation
CE to report publicly on cases of founded wrongdoing
Annual report to Parliament by PSIC
Annual report to Parliament by PSHRMAC/OPSVE
PSIC = Public Sector Integrity Commissioner PS = Public Servant CE = Chief Executive SO = Senior Officer
CPSA/OPSVE = Public Service Human Resource Management Agency of Canada/Office of Public Service Values and Ethics

Source: Public Service Human Resource Management Agency of Canada

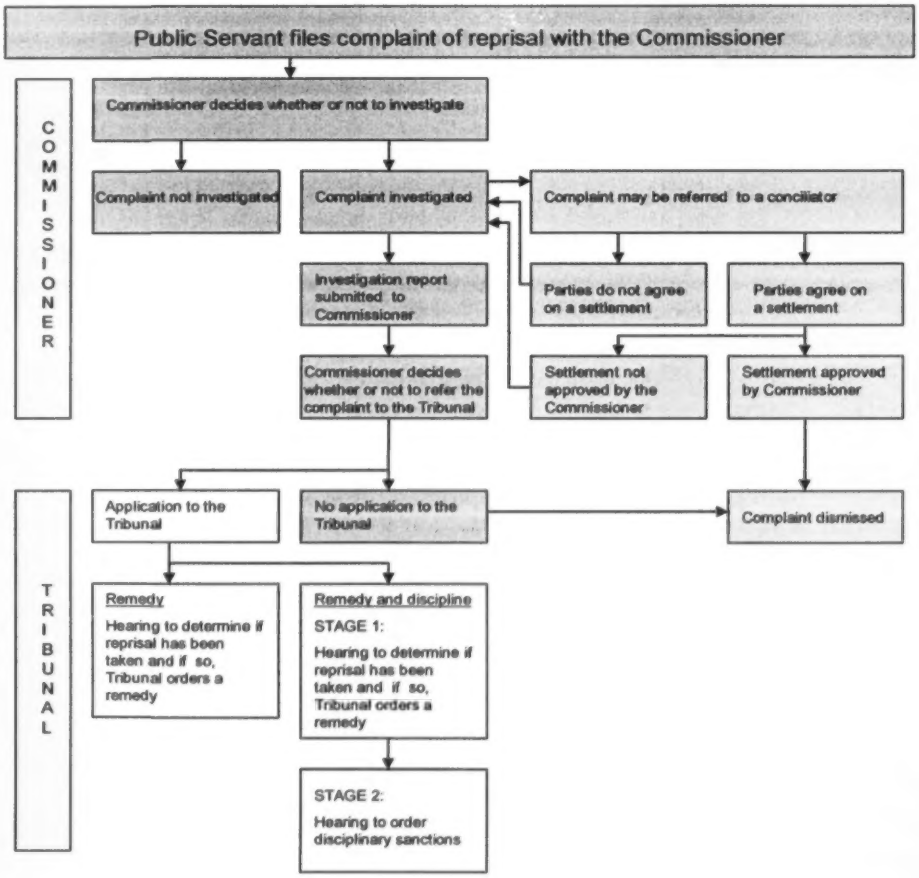
Reprisal Complaint Process

Generally, the reprisal complaint process consists of the following key steps.

1. The Commissioner receives a reprisal complaint from a public servant.
2. If the Commissioner decides to deal with the complaint, she designates a person from her office to conduct an investigation. The investigator can recommend to the Commissioner, at any point in the investigation, that a conciliator be appointed to attempt to bring about a settlement.
3. If, after receiving the investigator's report, the Commissioner is of the opinion that it is warranted, she can apply to the Tribunal for a determination of whether or not a reprisal was taken against the complainant.
4. If the Tribunal determines that the complainant was the subject of a reprisal, it can order a wide range of remedies. It can:
    - Permit the complainant to return to his or her duties;
    - Reinstate the complainant or pay compensation in lieu of reinstatement if the relationship of trust between the parties cannot be restored;
    - Pay to the complainant compensation in an amount not greater than the amount that is equivalent to the remuneration that would, but for the reprisal, have been paid to the complainant;
    - Rescind any measure or action, including any disciplinary action, and pay compensation in an amount equivalent to any financial or other penalty imposed on the complainant;
    - Pay to the complainant an amount equal to any expenses and any other financial losses incurred as a direct result of the reprisal;
    - Compensate the complainant, by an amount of not more than $10,000, for any pain and suffering experienced as a result of the reprisal.
5. If requested by the Commissioner, the Tribunal can also order disciplinary action against persons determined to have taken a reprisal, including the termination of employment or the revocation of appointment.
6. Public servants may also choose to deal with reprisals through any other Act of Parliament or collective agreement.

A diagram of the reprisal complaint process can be found on the following page.

Reprisal Complaint Process


Public Servant files complaint of reprisal with the Commissioner
COMMISSIONER
Commissioner decides whether or not to investigate
Complaint not investigated
Complaint investigated
Complaint may be referred to a conciliator
Investigation report submitted to Commissioner
Parties do not agree on a settlement
Parties agree on a settlement
Commissioner decides whether or not to refer the complaint to the Tribunal
Settlement not approved by the Commissioner
Settlement approved by Commissioner
TRIBUNAL
Application to the Tribunal
No application to the Tribunal
Complaint dismissed
Remedy
Hearing to determine if reprisal has been taken and if so, Tribunal orders a remedy
Remedy and discipline
STAGE 1:
Hearing to determine if reprisal has been taken and if so, Tribunal orders a remedy
STAGE 2:
Hearing to order disciplinary sanctions

Contact Information

Public Servants Disclosure Protection Tribunal Canada
1200 - 270 Albert Street
Ottawa, Ontario K1P 5G8

Telephone: 613-943-8310
Facsimile: 613-943-8325
E-mail: to come
Web site: to be developed

Statutory Responsibilities

The Public Servants Disclosure Protection Act, 2005, c. 46 P-31.9 [Assented to November 25, 2005]